

1 PILLSBURY WINTHROP SHAW PITTMAN LLP
2 SARAH G. FLANAGAN 70845
3 sarah.flanagan@pillsburylaw.com
JASON A. CATZ 224205
3 jason.catz@pillsburylaw.com
50 Fremont Street
4 Post Office Box 7880
San Francisco, CA 94120-7880
5 Telephone: (415) 983-1000
Facsimile: (415) 983-1200
6
7 Attorneys for Defendants
STANFORD UNIVERSITY and MAIA YOUNG

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 SOREN ANDERSEN, } No. C-07-03766 (JW)
13 Plaintiff, }
14 vs. } STANFORD UNIVERSITY'S AND
15 MAIA YOUNG'S NOTICE OF } MOTION AND MOTION TO DISMISS
MAIA YOUNG, an individual; STANFORD } FIRST AMENDED COMPLAINT
16 UNIVERSITY, a business entity unknown; } PURSUANT TO FRCP 12(b)(1) AND
and DOES 1-100, inclusive, } (6) AND MEMORANDUM OF
Defendant. } POINTS AND AUTHORITIES IN
SUPPORT THEREOF
17
18 Date: November 19, 2007
19 Time: 9:00 a.m.
Dept.: Courtroom 8
Judge: Hon. James Ware
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1 **NOTICE OF MOTION AND MOTION**

2 TO SOREN ANDERSEN:

3 NOTICE IS HEREBY GIVEN THAT on November 19, 2007, at 9:00 a.m., or as
 4 soon thereafter as the matter may be heard in the courtroom of the Honorable James Ware
 5 (Courtroom 8) of the above-entitled Court, located at 280 South First Street, San Jose,
 6 California, Defendants STANFORD UNIVERSITY (“Stanford”) and MAIA YOUNG
 7 (“Young”) will and hereby do move the Court for an order dismissing, without leave to
 8 amend, all claims alleged in Plaintiff SOREN ANDERSEN’s First Amended Complaint for
 9 Defamation and Violation of First Amendment Rights. This motion is made under Federal
 10 Rule of Civil Procedure 12(b)(1) and (6) on the grounds that:

11 1. The Court does not have jurisdiction over Plaintiff’s claims because they are
 12 barred by the *Rooker-Feldman* doctrine;

13 2. Plaintiff has not alleged and cannot allege that private defendants Stanford
 14 and Young were state actors who may be held liable for alleged violations of Plaintiff’s
 15 constitutional rights to petition the government for redress of grievances and/or to freedom
 16 of association;

17 3. Plaintiff has not alleged and cannot allege a constitutionally protected
 18 “association” as the basis for the claimed violation of his right to freedom of association;

19 4. Plaintiff’s claim that his right to freedom of association was violated is time-
 20 barred;

21 5. California Code of Civil Procedure § 425.16 (“the Anti-SLAPP statute”) is
 22 constitutional;

23 6. The Court does not have pendent jurisdiction over Plaintiff’s state law
 24 claims in the absence of his federal constitutional claims; and

25 7. Plaintiff’s state law defamation claims are barred by collateral estoppel.

26 This motion will be based on this Notice of Motion and Motion, the attached
 27 Memorandum of Points and Authorities, the Declaration of Jason Catz and attachments
 28 thereto filed jointly herewith, the defendants’ Request for Judicial Notice and attachments

1 thereto filed jointly herewith, and on all the records and files in this action and all additional
 2 matters of which the Court may take judicial notice.

3

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 I. **INTRODUCTION.**

6 Plaintiff owes defendants \$58,036.30 in fees and costs to reimburse some of the
 7 expenses to which he put them in successfully defending themselves against the baseless
 8 claims he pursued against them in the California courts. He claimed that statements made
 9 in the course of a police investigation and in banning him from Stanford yoga classes
 10 because of his harassing conduct towards Defendant Maia Young, a female student-
 11 instructor, were defamatory. Plaintiff has not paid any part of the fee award. Instead, he is
 12 seeking a “do over”. He has filed the same defamation claims in this Court, with a
 13 constitutional challenge to the Anti-SLAPP statute and a claim that the constitutional right
 14 to freedom of association covers a yoga class taught by Maia Young added to give him an
 15 argument that the Court has jurisdiction to review the defamation claims.

16 Plaintiff’s efforts to relitigate claims resolved against him in the California state
 17 courts should be rejected. Each cause of action should be dismissed without leave to
 18 amend. As discussed below, the Court does not have jurisdiction over Plaintiff’s claims
 19 because they are barred by the *Rooker-Feldman* doctrine; Plaintiff has not alleged and
 20 cannot allege that private defendants Stanford and Young were state actors who may be
 21 held liable for alleged violations of Plaintiff’s constitutional rights to petition the
 22 government for redress of grievances and/or to freedom of association; Plaintiff has not
 23 alleged and cannot allege a constitutionally protected “association” as the basis for the
 24 claimed violation of his right to freedom of association; Plaintiff’s claim that his right to
 25 freedom of association was violated is time-barred; California Code of Civil Procedure §
 26 425.16 (“the Anti-SLAPP statute”) is constitutional; the Court does not have pendent
 27 jurisdiction over Plaintiff’s state law claims in the absence of his federal constitutional
 28 claims; and Plaintiff’s state law defamation claims are barred by collateral estoppel.

1 II. FACTUAL BACKGROUND.

2 A detailed factual history of Plaintiff Soren Andersen's interactions with Stanford
 3 and Maia Young can be read at *Andersen v. Young*, H029484 and H029742 (Cal. Ct. App.
 4 6th District, filed November 6, 2006) ("Cal. App. Decision") (attached as Exhibit C to the
 5 Stanford University's and Maia Young Request for Judicial Notice in Support of Motion to
 6 Dismiss First Amended Complaint Pursuant to FRCP 12(b)(1) and (6) ("Request for
 7 Judicial Notice") filed herewith), pp. 3-8. In summary, Plaintiff began participating in
 8 Stanford Aerobics and Yoga club ("SAY") classes taught by Young, a Stanford Ph.D.
 9 student, in the Fall of 2003. Plaintiff pursued a relationship with Young, asserting that she
 10 had conveyed an interest in him. Despite Young's requests that Plaintiff stop contacting
 11 her, Plaintiff continued to contact Young, attend her classes and make her feel
 12 uncomfortable. Cal. App. Decision, pp. 3-4; First Amended Complaint for Defamation and
 13 First Amendment Violations ("Amended Federal Complaint"), ¶¶ 13-14.

14 In May 2004, Young's car was vandalized at her home in Menlo Park, California.
 15 Young reported the incident to the Menlo Park Police Department. The investigating
 16 officer asked Young if she had any conflict with anyone or thought anyone had behaved
 17 oddly toward her. In response, Young described her various contacts with Plaintiff. The
 18 officer contacted Plaintiff to talk about the vandalism and his unwanted contacts with
 19 Young. The officer recommended that Plaintiff stay away from Young and stop attending
 20 her classes. Plaintiff refused, and the officer so informed Young, suggesting that she bring
 21 her concerns to the attention of Stanford and the Stanford police to get assistance in
 22 banning Plaintiff from her yoga classes. She did so. Cal. App. Decision, p. 4; Amended
 23 Federal Complaint, ¶ 15.

24 Thereafter, Stanford representatives met with Plaintiff about his contacts with
 25 Young and banned Plaintiff from the yoga classes and the Stanford facilities where the
 26 classes were held. The Stanford representatives informed the Stanford Police and certain
 27 Stanford employees (yoga instructors) about the ban. Cal. App. Decision, pp. 5-8;
 28 Amended Federal Complaint, ¶¶ 17-19.

1 III. PROCEDURAL HISTORY.

2 On July 13, 2004, Plaintiff sued Stanford and Young for defamation in San Mateo
 3 County Superior Court, and the case was eventually transferred to the Santa Clara County
 4 Superior Court on June 9, 2005 (the “State Court Action”). Amended Federal Complaint,
 5 ¶¶ 20, 23. Plaintiff filed his First Amended Complaint For Defamation (“State Complaint”)
 6 on July 15, 2005, complaining that Young informed police that her car had been vandalized
 7 and that the police had contacted him about the incident. State Complaint (Request for
 8 Judicial Notice, Ex. A), ¶ 15. He also alleged that Young told Stanford that Plaintiff was a
 9 predator and had vandalized her property and that Stanford, in turn, republished those
 10 allegations to its employees. *Id.*, at ¶¶ 19-22.

11 Defendants filed a motion to strike Plaintiff’s complaint pursuant to California Code
 12 of Civil Procedure § 425.16 (“Anti-SLAPP statute”), arguing that Plaintiff’s State Court
 13 Action was a strategic lawsuit against public participation (a “SLAPP” suit). Statement of
 14 Decision; Order (filed August 31, 2005) (“Anti-SLAPP Order”) (Request for Judicial
 15 Notice, Ex. B), p. 1. Plaintiff had more than a year to investigate the facts that would
 16 support his State Complaint. Amended Federal Complaint, ¶ 20 (noting the State Court
 17 Action was filed July 13, 2004—more than a year before the Anti-SLAPP motion).
 18 Plaintiff was represented by counsel when his opposition to the Anti-SLAPP motion was
 19 filed, and his counsel argued against the motion at the August 30, 2005 hearing. (Plaintiff
 20 did not raise any concerns about the constitutionality of the Anti-SLAPP statute or his
 21 claimed constitutional right to freedom of association in the yoga class in his opposition
 22 papers or at the hearing.) The record refutes Plaintiff’s present contention that the State
 23 Court Action was decided without considering the merits of his defamation claims.
 24 Plaintiff had the opportunity to submit evidence sufficient to establish his *prima facie* case,
 25 but he failed to do so. Anti-SLAPP Order, p. 2.

26 The Santa Clara County Superior Court granted the Anti-SLAPP motion on
 27 August 31, 2005, holding “[t]he alleged statements by Young to Stanford colleagues and
 28 administrators and by Stanford administrators to campus police and other personnel are

1 protected speech because they are statements made in connection with an issue under
2 consideration or review by an official proceeding authorized by law.” *Id.*, at p. 2. That
3 court also held that Plaintiff had the burden to establish with admissible evidence the
4 probability that he would prevail on his claim but that he “provided no evidence to show
5 that he can prevail on his causes of action.” *Id.*

6 Defendants filed a motion for the award of attorneys’ fees and costs required by
7 Code of Civil Procedure section 425.16(c), which was granted and the order entered on
8 December 22, 2005. Cal. App. Decision, p. 10.

9 Plaintiff appealed both the Anti-SLAPP Order and the December 22, 2005 fee order.
10 Amended Federal Complaint, ¶¶ 31-35. Plaintiff did not challenge the constitutionality of
11 the Anti-SLAPP statute or claim that defendants violated his right to freedom of association
12 in his appeal papers. On November 6, 2006, the Sixth Appellate District for the California
13 Court of Appeal affirmed the Anti-SLAPP Order and the decision to award attorneys’ fees
14 and costs. Cal. App. Decision, pp. 1-2. The Sixth Appellate District remanded the Fee
15 Order for reconsideration of the amount of the award of fees and costs, directing that it
16 should not include any time spent on litigation activities other than the actual Anti-SLAPP
17 motion. *Id.*, at pp. 24-25.

18 Plaintiff filed a petition for review by the California Supreme Court, which was
19 denied on January 17, 2007. *See* January 17, 2007 Order Denying Petition for Review
20 (“Cal. Supreme Court Order”) (Request for Judicial Notice, Ex. D), p. 1. Defendants
21 subsequently filed a motion proposing recalculation of the attorneys’ fees and costs to
22 comply with the remand, which was granted on June 22, 2007. Plaintiff was ordered to pay
23 Stanford \$58,036.30 in fees and costs. Amended Federal Complaint, ¶ 48; June 22, 2007
24 Order Granting Motion for Attorneys’ Fees Pursuant to CCP 425.16 On Remand (Request
25 for Judicial Notice, Ex. E), pp. 1-2.

26 Plaintiff apparently thereafter submitted complaints to the State Bar of California
27 about all three defense attorneys and his own counsel and to the California Commission on
28 Judicial Performance (presumably about one or more of the judges who ruled in

1 defendants' favor). *See* Amended Federal Complaint, ¶¶ 50-53. No action was taken in
 2 response to any of them. Amended Federal Complaint, ¶¶ 51, 53.

3 Plaintiff initiated this action on July 23, 2007 with a complaint alleging four causes
 4 of action. The first two causes of action for defamation are lifted nearly word-for-word
 5 from the State Complaint. Indeed, of the eleven paragraphs setting forth the defamation
 6 causes of action in the initial federal complaint, nine paragraphs are nearly identical to
 7 those appearing in the State Complaint and the other two paragraphs contain only modest
 8 changes. *Compare* Complaint for Defamation and Violation of First Amendment Rights
 9 ("Initial Federal Complaint"), ¶¶ 54-64 *with* State Complaint, ¶¶ 18-28. Similarly, the first
 10 seventeen paragraphs of the federal complaint (setting forth the factual allegations) are
 11 nearly identical to the first seventeen paragraphs of the State Complaint, with the exception
 12 of three slightly revised paragraphs. *Compare* Initial Federal Complaint, ¶¶ 1-17 *with* State
 13 Complaint, ¶¶ 1-17. The third cause of action alleged that the decision to strike his State
 14 Complaint and award defendants their mandatory attorneys' fees violated his right to
 15 petition the government for redress of grievances. Initial Federal Complaint, ¶¶ 65-67. His
 16 fourth cause of action also claimed violation of his right to petition the government for
 17 redress of grievances. Initial Federal Complaint, ¶ 68.

18 On August 21, 2007, Plaintiff filed a Notice of Appeal indicating that he intends to
 19 appeal the state court's calculation of the attorneys' fees and costs on remand. *See*
 20 Amended Federal Complaint, ¶ 56. *That same day*, Plaintiff filed his Amended Federal
 21 Complaint, pointing out that he had filed the Notice of Appeal in the State Court Action,
 22 among other changes. *Id.* While Plaintiff's factual allegations in the Amended Federal
 23 Complaint still recite the same facts presented in the State Complaint, he added allegations
 24 that he personally disclosed the details of his conflict with Young to certain members of the
 25 SAY staff and the Stanford administration and attached as exhibits some of his
 26 communications with Young and other Stanford personnel and the notes he took of
 27 Young's classes. Amended Federal Complaint, ¶¶ 18-19 and Exs. 1-6, 8-12. He also added
 28

1 an alleged violation of his constitutional right to freedom of association to the third cause of
 2 action for alleged violation of the First Amendment. Amended Federal Complaint, ¶ 69.

3 IV. LEGAL ARGUMENT.

4 A. All of Plaintiff's Claims Are Barred By the *Rooker-Feldman* Doctrine.

5 Plaintiff alleges that dismissal of the State Court Action was unlawful in that it
 6 violated his First Amendment rights to petition for redress of grievances and freedom of
 7 association. Amended Federal Complaint, ¶¶ 69-73. He asks this Court to ignore the trial
 8 court judgment, to re-hear the defamation claims adjudicated in the State Court Action, and
 9 to award him damages in the amount of the attorneys' fees and costs he owes to defendants
 10 (but has not paid). Amended Federal Complaint, ¶¶ 57-73 and 14:17-21 (prayer for relief).
 11 The Court lacks jurisdiction to hear these claims. They are barred by the *Rooker-Feldman*
 12 doctrine.

13 Federal district courts may only exercise original jurisdiction. They may not
 14 exercise appellate jurisdiction over state court decisions. *District of Columbia v. Feldman*,
 15 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923);
 16 *Dubinka v. Judges of the Superior Court*, 23 F. 3d 218, 221 (9th Cir. 1994). The *Rooker-*
 17 *Feldman* doctrine bars the subsequent federal court case if, as here, plaintiff (1) has lost in
 18 state court, (2) complains of injuries caused by the state court judgment and (3) asks the
 19 district court to review and reject that final state court judgment. See *Henrichs v. Valley*
 20 *View Dev.*, 474 F. 3d 609, 612-13 (9th Cir. 2006). The doctrine bars review even if a
 21 plaintiff challenges the state court's action as unconstitutional. *Bianchi v. Rylaarsdam*, 334
 22 F. 3d 895, 901 (9th Cir. 2003) ("Rooker-Feldman doctrine is not limited to claims that were
 23 actually decided by the state courts, but rather it precludes review of all state court
 24 decisions in particular cases arising out of judicial proceedings even if those challenges
 25 allege that the state court's action was unconstitutional. Stated plainly, 'Rooker-Feldman'
 26 bars any suit that seeks to disrupt or 'undo' a prior state-court judgment, regardless of
 27 whether the state-court proceeding afforded the federal-court plaintiff a full and fair
 28

1 opportunity to litigate her claims.”).¹ A federal plaintiff does not avoid the *Rooker-*
 2 *Feldman* bar by styling an attack on a state court’s ruling as a constitutional or civil rights
 3 action. *Branson v. Nott*, 62 F. 3d 287, 291 (9th Cir. 1995); *Worldwide Church of God v.*
 4 *McNair*, 805 F. 2d 888, 891 (9th Cir. 1995); *Allah v. Superior Court*, 871 F. 2d 887, 891 (9th
 5 Cir. 1989).

6 Plaintiff’s recent Notice of Appeal of the trial court’s *calculation* of attorneys’ fees
 7 and costs on remand does not change the analysis. The substantive rulings on the Anti-
 8 SLAPP motion and defendants’ entitlement to mandatory fees and costs are final.
 9 “Proceedings end for *Rooker-Feldman* purposes when the state courts finally resolve the
 10 issue that the federal court plaintiff seeks to relitigate in a federal forum, even if other
 11 issues remain pending at the state level.” *Mothershed v. Justices of Supreme Court*, 410
 12 F3d 602, 604 fn. 1 (9th Cir. 2005) (relevant portion of June 6, 2005 opinion amended on
 13 July 21, 2005 at 2005 U.S. App. LEXIS 14804 at *1). “[I]f a state court decision is final
 14 enough that the Supreme Court *does* have jurisdiction over a direct appeal, then it is final
 15 enough that a lower federal court *does not* have jurisdiction over a collateral attack on that
 16 decision.” *Federacion*, 410 F. 3d 17, 27 (1st Cir. 2005). Plaintiff did not raise the
 17 constitutionality of the Anti-SLAPP statute in the State Court Action, so there were no
 18 federal issues for him to appeal to the U.S. Supreme Court pursuant to 28 U.S.C. § 1257
 19 jurisdiction. “Final judgments may be reviewed...where the validity of a statute of any
 20 State is drawn in question on the ground of its being repugnant to the Constitution.” See 28
 21 U.S.C. § 1257. Even if he had raised such a challenge, the state proceedings ended for
 22 *Rooker-Feldman* purposes when the California Supreme Court denied review of his appeal
 23 of the substantive rulings on the Anti-SLAPP motion and the entitlement to fees and costs.
 24 Cal. Supreme Court Order, p. 1. At that point, any constitutional challenges to the Anti-

25 ¹ This is true even in the instance in which plaintiff, as here, did not assert a constitutional
 26 challenge in the state court action, raising it for the first time in the district court. In
 27 *Bianchi*, the Ninth Circuit held that the *Rooker-Feldman* doctrine bars attacks on state
 28 court judgments even when based on constitutional rights not addressed by the state court.
See Bianchi, 334 F. 3d at 900-01.

1 SLAPP statute would have been appealable to the United States Supreme Court under 28
 2 U.S.C. § 1257. The decision to grant the Anti-SLAPP motion and award mandatory fees
 3 and costs was conclusively decided at that time. *See Federacion*, 410 F. 3d at 25-26. The
 4 only issue left on remand was how to calculate the amount of the mandatory attorneys' fees
 5 and costs.²

6 This is a classic *Rooker-Feldman* case. The first two causes of action seek to
 7 relitigate the two state law defamation claims from the State Court Action. Amended
 8 Federal Complaint, ¶¶ 57-68. Indeed, of the twenty-eight paragraphs comprising the State
 9 Complaint, twenty-three of them appear almost word-for-word in the Amended Federal
 10 Complaint and the other five paragraphs appear with modest revisions. The third and
 11 fourth causes of action ask the Court to decide that the Anti-SLAPP statute used to strike
 12 his State Complaint is unconstitutional because the State Complaint was adjudicated
 13 without deciding the merits of his defamation claims.³ Amended Federal Complaint,
 14 ¶¶ 69-73. He requests damages purportedly caused by the state court's judgment (i.e., the
 15 amount of the attorneys' fees awarded in state court, though he has not paid them). *Id.*, at
 16 ¶¶ 69-73 and 14:17-21 (prayer for relief). The *Rooker-Feldman* doctrine bars his collateral
 17 attack on the state court judgment. If the Court agrees, there is no need to consider the
 18 alternative bases for dismissal of each cause of action discussed below.

19 B. The Third and Fourth Causes of Action Should Be Dismissed.

20 Plaintiff's third and fourth causes of action allege two constitutional violations.
 21 Both the third and fourth causes of action allege that the defendants violated his right to
 22 petition for redress of grievances because they used the Anti-SLAPP statute to strike his
 23

24 ² Any argument by Plaintiff that *Rooker-Feldman* requires a final judgment in all respects,
 including the amount of fees, is unavailing for the reasons discussed above. But it also
 would fail to get Plaintiff where he wants to go because, even if successful, it should lead
 to a stay of this action in recognition of the fact that the same issues are already the
 subject of another action that has been pending since 2004.

25
 26
 27 ³ To the contrary, a decision on an Anti-SLAPP motion results in a dismissal on the merits.
 Varian Medical Systems, Inc. v. Delfino, 35 Cal. 4th 180, 193 (2005) ("granting a motion
 to strike under section 425.16 results in the dismissal of a cause of action on the merits.")

1 State Complaint and obtain an order requiring him to pay attorneys' fees and costs. *See*
 2 Amended Federal Complaint, ¶¶ 69-73 (third cause of action alleges "right to petition for
 3 redress of grievances...has been violated" while the fourth cause of action is titled "right to
 4 petition"). The third cause of action also includes the allegation that Stanford's decision
 5 to ban him from the yoga classes and the facilities in which they are held violated his First
 6 Amendment right to freedom of association. *See* Amended Federal Complaint, ¶ 69.
 7 Plaintiff has not plead a sustainable federal claim based on the violation of his rights to
 8 petition or to freedom of association. The third and fourth causes of action must be
 9 dismissed without leave to amend.

10 1. Plaintiff does not and cannot allege the requisite state action.

11 Redress for violation of a constitutional right requires some type of state action on the
 12 part of the defendant. "[A] 'threshold requirement of any constitutional claim is the
 13 presence of state action.'" *Duffield v. Robertson Stephens & Co.*, 144 F. 3d 1182, 1200 (9th
 14 Cir. 1998)(disapproved on other grounds). Typically, the requisite state action is performed
 15 by an official government agency or state officer. The conduct of private parties may be
 16 only considered state action if "their actions can be 'fairly attributable' to the state." *Id.* A
 17 private party's conduct can constitute state action where "[p]rivate persons, jointly engaged
 18 with state officials in the prohibited action, are acting 'under color' of law for purposes of
 19 the statute. To act 'under color' of law does not require that the accused be an officer of the
 20 State. It is enough that he is a willful participant in joint activity with the State or its
 21 agents." *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 941 (1982).

22 Plaintiff alleges that the use of the Anti-SLAPP statute in the State Court Action
 23 violated his right to petition. However, he does not and cannot allege that Stanford and
 24 Young participated in joint activity with the state in enacting or enforcing the Anti-SLAPP
 25 statute. Filing a motion or seeking other remedies available through litigation does not
 26 establish the state action necessary to maintain a constitutional claim. "With respect to
 27 [private defendant] Wilson, the only possible allegation of state action the court can discern
 28 is pursuit of legal remedies through litigation in state court. It is well established that the

1 pursuit of state-created remedies by a private litigant does not constitute state action.”
 2 *Wilson v. Hilton*, 2000 U.S. Dist. LEXIS 22685 at *8 (N.D. Cal. 2000). “The mere filing of
 3 a lawsuit certainly does not invoke the ‘overt, significant assistance of state officials.’ To
 4 hold otherwise would convert all plaintiffs in civil actions, no matter what the
 5 circumstances, into state actors for constitutional purposes. The Court cannot agree with
 6 such a sweeping and implausible proposition.” *Foley v. Kennedy*, 2004 U.S. Dist. LEXIS
 7 10328 at *14-15 (N.D. Cal. 2004) (citations omitted).

8 “Merely resorting to the courts and being on the winning side of a lawsuit does not
 9 make a party a co-conspirator with the judge.” *Dennis v. Sparks*, 449 U.S. 24, 28 (1980);
 10 *See also Lugar*, 457 U.S. at 937 (“without a limit [on who qualifies as a state actor] private
 11 parties could face constitutional litigation whenever they seek to rely on some state rule
 12 governing their interactions with the community surrounding them”). *Tulsa Professional*
 13 *Collection Services*, 485 U.S. 478, 485 (1988) (private use of state sanctioned private
 14 remedies or procedures does not rise to the level of state action).

15 Plaintiff also does not (and cannot) allege that Stanford participated in joint activity
 16 with the state in barring him from yoga classes and the facilities in which they take place,
 17 allegedly in violation of his right to freedom of association. *See Amended Federal*
 18 *Complaint*, ¶ 69. He concedes that Stanford is a private university. *See Amended Federal*
 19 *Complaint*, ¶ 3. Private universities are not state actors in the absence of joint activity
 20 between the university and the state. *See Greenya v. George Washington University*, 512 F.
 21 2d 556, 561 (D.C. App. 1975) (no state action in the absence of any showing of control of
 22 the private university’s action by the state); *Blouin v. Loyola University*, 506 F. 2d 20, 22
 23 (5th Cir. 1975) (record failed to disclose any nexus between the alleged unconstitutional
 24 activity and the purported state or federal government involvement); *Spark v. Catholic*
 25 *University*, 510 F. 2d 1277, 1281-82 (1975) (“it is necessary to show that the Government
 26 exercise some form of control over the actions of the private [university]”); *Menard v.*
 27 *Board of Trustees of Loyola University*, 2004 U.S. Dist. LEXIS 4597 at *5 (E.D. La. 2004)
 28 (“Courts have consistently found that private universities are not state actors”); *Jones v.*

1 *MacInnes*, 1997 U.S. Dist. LEXIS 20688 at *5-6 (E.D. La. 1997) (dismissing student's 42
 2 U.S.C. § 1983 claims against Tulane University, a private university, due to lack of state
 3 action). Plaintiff alleges that it was Stanford that banned him from the yoga class and
 4 facilities. Amended Federal Complaint, ¶ 19 ("The STANFORD officials nonetheless
 5 unreasonably disregarded all information provided by Plaintiff...barring him from being in
 6 the same vicinity as YOUNG while on the STANFORD campus, thereby excluding him
 7 from access to an entire geographical region of the campus, and barring him from attending
 8 any yoga classes at the Club or otherwise having any contact with anyone associated with
 9 the Club.") He has not alleged any state action to support his freedom of association claim.

10 Stanford and Young are not state actors against whom Plaintiff can pursue his
 11 constitutional claims simply because they filed a successful Anti-SLAPP motion and/or
 12 banned him from their private property. The third and fourth causes of action for alleged
 13 violation of his right to petition and his right to freedom of association should be dismissed
 14 without leave to amend for failure to meet the state action requirement.

15 2. The claim for violation of his right to freedom of association also lacks a
 16 protected association and is time-barred.

17 In addition to failing to plead state action, Plaintiff fails to allege a constitutionally
 18 protected "association" and, on the face of the complaint, has waited too long to assert such
 19 a violation in any event.

20 The constitutional right to freedom of association protects two distinct types of
 21 associations: highly personal relationships protected by the Fourteenth Amendment (e.g.,
 22 marriage) and those explicitly listed in the first amendment (speaking, worshipping, and
 23 petitioning the government). *IDK v. County of Clark*, 836 F. 2d 1185, 1191-92 (9th Cir.
 24 1988) (citing *Roberts v. United States Jaycees*, 468 U.S. 609 (1984)). Plaintiff's allegation
 25 that he was denied the opportunity to participate in a yoga class allegedly open to the public
 26 does not involve any of these protected associations. This claim in the third cause of action
 27 fails on this ground alone.

28

1 The statute of limitations for a *Bivens* claim for personal damages resulting from the
 2 violation of a constitutional right is one year. *Western Center for Journalism v. Cederquist*,
 3 235 F. 3d 1153, 1156 (9th Cir. 2000). Plaintiff has known that he was banned from the
 4 SAY facilities since May 2004. Amended Federal Complaint, ¶¶ 18-20. The time for him
 5 to sue on this cause of action passed long ago. This claim in the third cause of action must
 6 be dismissed on this ground alone.

7 3. The Anti-SLAPP statute is constitutional.

8 The California Supreme Court has held that the Anti-SLAPP law does not
 9 unconstitutionally burden the right to petition, which “is not absolute, providing little or no
 10 protection for baseless litigation.” *Equilon Enterprises, LLC v. Consumer Cause, Inc.*, 29
 11 Cal. 4th 53, 63-64 (2002) (quoting *Church of Scientology v. Wollersheim*, 42 Cal. App. 4th
 12 628, 648 n. 4 (1996)). *Equilon Enterprises* held that the Anti-SLAPP statute is merely a
 13 procedural device to winnow out unmeritorious actions; it “subjects to potential dismissal
 14 only those causes of action as to which the plaintiff is unable to show a probability of
 15 prevailing on the merits,” and “provides an efficient means of dispatching, early on in the
 16 lawsuit, a plaintiff’s meritless claims.” *Id.*, 29 Cal. 4th at 63;⁴ see also earlier opinions to
 17 the same effect from courts of appeal: *Lafayette Morehouse v. Chronicle Publishing Co.*, 37
 18 Cal. App. 4th 855, 864-68 (1995) (“[S]ection 425.16 does not bar a plaintiff’s complaints
 19 that arise from another person’s exercise of his or her free speech or petition rights, ‘but
 20 only provides a mechanism through which such [plaintiff’s] complaints can be evaluated at
 21 an early stage in the litigation process.’”) (superseded on other grounds); *People v. Health*
 22 *Laboratories of North America*, 87 Cal. App. 4th 442, 449 (2001) (“the [Anti-]SLAPP
 23 statute does not in essence impinge upon or implicate the fundamental right of free
 24 speech”).

25 _____
 26 ⁴ The California Supreme Court also upheld the constitutionality of the statute’s fee
 27 shifting provisions. See *Equilon Enterprises*, 29 Cal. 4th at 63-64 (“[Plaintiff] fails to
 28 persuade that such a fee-shifting provision overburdens those who exercise the First
 Amendment right of petition by filing lawsuits”).

1 In *Bernardo v. Planned Parenthood Federation of America*, the plaintiff argued that
 2 the motion to strike violated her First Amendment right to petition the government for
 3 redress of grievances. *Bernardo v. Planned Parenthood Federation of America*, 115 Cal.
 4 App. 4th 322, 357 (2004) . Relying on *Equilon Enterprises*, the *Bernardo* court held that
 5 “the anti-SLAPP statute did not prevent Bernardo from making a meritorious claim; it
 6 properly prevented her from continuing to prosecute her meritless SLAPP suit. The
 7 application of section 425.16 in this matter did not violate [plaintiff’s] *First Amendment*
 8 rights.” *Bernardo*, 115 Cal. App. 4th at 358 (emphasis in original).

9 The Ninth Circuit has affirmed federal district court orders granting special motions
 10 to strike complaints under the Anti-SLAPP statute without discerning any constitutional
 11 problem in the statute. *See Vess v. Ciba-Geigy Corp.*, 317 F. 3d. 1097, 1110 (9th Cir. 2003);
 12 *United States ex rel. Newsham v. Lockheed Missiles and Space Co.*, 190 F. 3d 963, 971 (9th
 13 Cir. 1999).

14 As a matter of law, the third and fourth causes of action should be dismissed without
 15 leave to amend because the Anti-SLAPP statute is constitutional.

16 C. The First and Second Causes of Action Should Be Dismissed

17 1. The Court lacks jurisdiction over the state law claims.

18 In federal question cases, a valid federal claim must be pleaded before a federal court
 19 can exercise pendent jurisdiction. *Hunter v. United Van Lines*, 746 F. 2d 635, 649 (9th Cir.
 20 1984) (“it makes no sense to speak of pendent (supplemental) jurisdiction until after a court
 21 has independently acquired jurisdiction over a federal cause of action”). Where a plaintiff’s
 22 federal claims are all dismissed for lack of subject matter jurisdiction, the court has no
 23 discretion to retain supplemental jurisdiction over the plaintiff’s state law claims. *Scott v.*
 24 *Pasadena Unified School Dist.*, 306 F. 3d 646, 664 (9th Cir. 2002) (because federal claims
 25 were dismissed for lack of constitutional standing, the court could not retain jurisdiction).

26 For the reasons stated above, Plaintiff’s federal constitutional claims should be
 27 dismissed without leave to amend. Without those federal claims, the Court does not have
 28

1 subject matter jurisdiction over Plaintiff's state law defamation claims.⁵ The Court must
 2 dismiss his state law claims. *Hodge v. Mountain States Telephone and Telegraph Co.*, 555
 3 F. 2d 254, 261 (9th Cir. 1977) ("When a district court dismisses all federal claims prior to
 4 trial, it should not retain jurisdiction over pendent state claims").

5 2. Plaintiff's state law defamation claims are barred by collateral estoppel.

6 On August 21, 2007, Plaintiff filed an appeal of the Santa Clara County Superior
 7 Court's order calculating the award for attorneys' fees and costs on remand. Amended
 8 Federal Complaint, ¶ 56. Though that appeal will not prevent the state court's substantive
 9 decision to strike his state law defamation claims from eventually having res judicata effect,
 10 his appeal delays the inevitable claim preclusion of the State Court Action, as he no doubt
 11 knows. However, even if claim preclusion has not yet attached, Plaintiff is still barred from
 12 pursuing the defamation claims by issue preclusion.

13 The Anti-SLAPP statute applies to state law claims in federal court. *Vess*, 317 F. 3d
 14 at 1109 ("Motions to strike a state law claim under California's Anti-SLAPP statute may be
 15 brought in federal court"). Plaintiff's defamation causes of action must be dismissed
 16 because the California courts have already dismissed those claims on the merits pursuant to
 17 the Anti-SLAPP statute, ruling that Plaintiff's state law defamation claims constitute a
 18 SLAPP suit against the defendants and that Plaintiff's evidence did not show that he could
 19 prevail on his claims. Anti-SLAPP Order, p. 2.

20 Collateral estoppel applies where (1) the issues in both proceedings are identical;
 21 (2) the issue in the prior proceeding was actually litigated and actually decided; (3) the
 22 decision in the former proceeding is final; and (4) the party against whom preclusion is
 23 sought is the same as, or in privity with, the party to the former proceeding. *Lucido v.*
 24 *Superior Court*, 51 Cal. 3d 335, 341 (1990). Plaintiff sued Stanford and Young in the State
 25

26 ⁵ Plaintiff makes a passing parenthetical reference to "(Diversity Jurisdiction)" in his
 27 complaint (Amended Federal Complaint, at 2:03), but he does not supply any basis for it.
 28 To the contrary, he alleges that he "at all relevant times, was a resident of the County of
 Santa Clara, California." *Id.* ¶ 1.

1 Court Action for defamation and defamation per se, and Stanford and Young obtained a
 2 final decision on the merits in the State Court Action. *Varian Medical Systems, Inc. v.*
 3 *Delfino*, 35 Cal. 4th 180, 193 (2005) (“granting a motion to strike under section 425.16
 4 results in the dismissal of a cause of action on the merits”). The defamation issues alleged
 5 in the Amended Federal Complaint are the exact same issues alleged in the State Complaint
 6 against the same two defendants and decided by the Santa Clara County Superior Court and
 7 affirmed on appeal. *Compare* Amended Federal Complaint, ¶¶ 1-17, 57-68 *with* State
 8 Complaint, ¶¶ 1-17, 18-28; Cal. App. Decision, pp. 12-17, 24-25.

9 Stanford and Young moved to strike the complaint pursuant to California Code of
 10 Civil Procedure § 425.16, and the Santa Clara County Superior Court decided that “[t]he
 11 alleged statements by Young to the police are protected speech because they are statements
 12 made before an official proceeding authorized by law. The alleged statements by Young to
 13 Stanford colleagues and administrators and by Stanford administrators to campus police
 14 and other personnel are protected speech because they are statements made in connection
 15 with an issue under consideration or review by an official proceeding authorized by law.”
 16 Anti-SLAPP Order, p. 2 (citations omitted). The court also decided that Plaintiff “failed to
 17 meet his burden. Plaintiff has provided no evidence to show that he can prevail on his
 18 causes of action.” *Id.* The Santa Clara County Superior Court’s decision on these issues
 19 was affirmed on appeal. Cal. App. Decision, pp. 12-17, 24-25. The California Supreme
 20 Court denied Plaintiff’s petition for review on January 17, 2007. Cal. Supreme Court
 21 Order, p. 1. For purposes of collateral estoppel, Plaintiff’s defamation issues have been
 22 conclusively decided in defendants’ favor.

23 Plaintiff’s recent appeal of the calculation of attorneys’ fees and costs does not
 24 prevent the state court’s decision from having collateral estoppel effect. “The rules of res
 25 judicata are applicable only when a final judgment is rendered. However, for purposes of
 26 *issue preclusion* (as distinguished from merger and bar), ‘final judgment’ includes any prior
 27 adjudication of an issue in another action that is determined to be *sufficiently firm to be*
 28 *accorded conclusive effect*...the judgment must ordinarily be a firm and stable one, the ‘last

1 word' of the rendering court—a 'final judgment.'" " *Sandoval v. Superior Court*, 140 Cal.
2 App. 3d 932, 936 (1983) (quoting Restatement 2d Judgments § 13) (emphasis in original).
3 "[T]o hold invariably that that kind of carry-over is not to be permitted until a final
4 judgment in the strict sense has been reached in the first action can involve a hardship—
5 either needless duplication of effort and expense in the second action to decide the same
6 issue." *Id.* "[T]hat the parties were fully heard, that the court supported its decision with a
7 reasoned opinion, that the decision was subject to appeal or was in fact reviewed on appeal,
8 are factors supporting that the decision is final for purposes of preclusion." *Id.* All of these
9 factors are present in this case. The two causes of action for defamation must be dismissed
10 as barred by collateral estoppel.

11 V. CONCLUSION.

12 Plaintiff's efforts to relitigate claims resolved against him in the California state
13 courts should be rejected. Each cause of action should be dismissed without leave to
14 amend.

15 Dated: August 31, 2007.

16 PILLSBURY WINTHROP SHAW PITTMAN LLP
17 SARAH G. FLANAGAN
18 JASON A. CATZ
19 50 Fremont Street
20 Post Office Box 7880
21 San Francisco, CA 94120-7880

22 By _____ /s/ Jason A. Catz
23 Attorneys for Defendants STANFORD
24 UNIVERSITY and MAIA YOUNG
25
26
27
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